

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN BRASWELL,

Defendant-Appellant.

UNPUBLISHED

September 18, 2003

No. 239718

Wayne Circuit Court

LC No. 01-004433

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced to seven months to four years in prison for the possession of less than twenty-five grams of heroin conviction, and to seven months for the possession of marijuana conviction. We affirm.

Defendant argues that the evidence presented at trial was insufficient to prove that he possessed the heroin and marijuana. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). A court's findings of fact are clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996).

To support a conviction for possession of less than twenty-five grams of heroin, the prosecution must prove four elements: (1) the recovered substance is heroin; (2) the heroin is in a mixture weighing less than twenty-five grams; (3) the defendant was not authorized to possess the heroin; and (4) the defendant knowingly possessed the heroin. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992); see also MCL 333.7403(2)(a)(v). To support a conviction for possession of marijuana, the prosecution must prove three elements: (1) the recovered substance is marijuana; (2) the defendant was not authorized to possess the marijuana; and (3) the defendant knowingly possessed the marijuana. *Wolfe*, *supra* at 516-517; see also MCL 333.7403(2)(d).

Defendant argues that the evidence was insufficient to prove that he knowingly possessed the heroin and marijuana for the following reasons: (1) he did not match the description of the suspected seller from the controlled buy; (2) he was found in an upstairs bedroom while the drugs were located on the main floor of the house, in the kitchen; (3) there was no evidence he resided at the house; (4) he was not brandishing a weapon and there were no firearms confiscated from the house; and (5) the police did not perform any pre-raid surveillance to determine if he was in exclusive use of the house.

In *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998), our Court articulated the following principles regarding the element of possession:

A person need not have physical possession of a controlled substance to be found guilty of possessing it. Possession may be either actual or constructive, and may be joint as well as exclusive. The essential question is whether the defendant had dominion or control over the controlled substance. A person's presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional link between the defendant and the contraband must be shown. However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. [Citations omitted.]

Further, "[e]ven in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but merely introduce evidence sufficient to convince a [rational trier of fact] in the face of whatever contradictory evidence the defendant may provide." *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). "The ultimate question is whether, viewing the evidence in a light most favorable to the [prosecution], the evidence establishes a sufficient connection between the defendant and the contraband to support the inference that the defendant exercised a dominion and control over the substance." *Wolfe, supra* at 521, quoting *United States v Disla*, 805 F2d 1340, 1350 (CA 9, 1986).

In the present case, defendant was the only person found inside the locked house; therefore, a rational trier of fact could infer that defendant was in exclusive use of the house at the time the police raid was conducted. In addition, the presence of four packets of heroin on the kitchen counter next to a set of keys supported the reasonable inference that whoever placed the keys on the counter had knowledge and control of the heroin. The keys belonged to defendant's sister's vehicle and there was no evidence that anyone else had access to the vehicle. Thus, it was reasonable to infer that defendant placed the keys on the kitchen counter because there was no other person in the house, and hence, defendant had knowledge and control of the heroin. Similarly, knowledge and control of the seventy-two packets of heroin and baggy of marijuana hidden in the ceiling could be inferred because the heroin recovered from the kitchen ceiling was packaged in the same manner as the heroin found on the kitchen counter and the baggy of marijuana was found next to the heroin. Based on this evidence, we conclude that the factual findings were not clearly erroneous. Furthermore, viewing the evidence in a light most favorable to the prosecution, we hold that the evidence established a sufficient connection between defendant and the heroin and marijuana to support the inference that defendant exercised dominion and control over the substances. *Wolfe, supra* at 521.

Affirmed.

/s/ Donald S. Owens
/s/ Richard Allen Griffin
/s/ Bill Schuette